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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF
WEST END WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01157A-05-0706

STAFF'S CLOSING BRIEF

I. INTRODUCTION

On October 5, 2005, West End Water Company ("West End" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an Application for an extension of its existing Certificate of Convenience and Necessity ("Certificate").

West End is an Arizona corporation in good standing with the Commission's Corporations Division, and engaged in providing water service to customers in portions of Maricopa County, Arizona. West End is seeking Commission authority to add approximately one quarter square mile to its existing certificated area. The City of Surprise (the "City") filed an Application for Leave to Intervene and argues that the City intends to serve that area because it is within its general planning area and therefore the extension should be denied.

On May 22 and 24, 2006, an evidentiary hearing was held regarding the above application. Several issues were raised at the hearing, including, but not limited to, the status of a request for service for the extension area and the City's ability to provide water to the requested extension area in a timely manner.

II. WEST END WATER COMPANY HAS A REQUEST TO PROVIDE SERVICE FOR THE EXTENSION AREA

The extension area will have a planned subdivision called Walden Ranch ("Walden"). Walden is approximately 70 percent within West End's current service area. The remaining 30 percent of Walden would be in the extension area requested by West End. According to West End's witness, Marvin Collins, West End received a letter "that was sent to us requesting water service by

1 the Wittman 510, LLC.” (Tr. #1 at 25). The letter was sent to West End on March 3, 2005. (Ex. A-
2 2). At the time of the letter, Wittman 510, LLC was the developer of Walden. Another letter was sent
3 to West End on August 30th, 2006. (Ex. COS- 22). In this letter, Wittman 510, LLC, withdrew its
4 request to have West End serve the area because Wittman 510, LLC was in the process of selling the
5 extension area to Woodside Homes. In this letter, Wittman 510, LLC claims that Woodside Homes
6 and the City have entered into an agreement that would make the City the water provider for the
7 extension area.

8 At the hearing, it became apparent that the development is in the process of changing hands
9 and Woodside Homes (“Woodside”) will, in all likelihood, become the developer of Walden.
10 According to the West End’s witness, Marvin Collins, “we don’t have a specific request from
11 Woodside related to Walden Ranch specifically requesting water services.” (Tr. #1 at 221).
12 However, Woodside has received a “will serve” letter from the City. The letter, dated July 14, 2006,
13 issued in response to a request by Woodside for “City water service” for the extension area. (Ex.
14 COS-20).

15 Owing to this confused state of affairs, the parties to the case spent much of the hearing
16 arguing the validity of the original request for service that West End received from the original
17 developer in this case, Wittman 510, LLC. Requests for service are helpful when Staff makes its
18 analysis because these requests help to show that water service is necessary in a particular area. *See*
19 *also* Discussion at the October 17 Open Meeting regarding Arizona Water Company’s application for
20 extension of CC & N W-01445A-06-0059 and the importance of requests for service from within the
21 area to be certificated.

22 Clearly, there is a need for water service in this extension area. In this case, 2 different
23 developers have requested water service from two different water providers in the same extension
24 area. Requests for service are also important because Staff will factor into its analysis the specific
25 preferences different parties may have regarding their water provider. October 17 Open Meeting
26 *supra* choice of water provider may be a property owner’s property right. In this case, the confusion
27 regarding the requests for service prompted testimony by the probable developer of the extension
28 area. Ironically, Gene Morrison, the Regional President of Woodside Homes, did not have a

1 preference for a specific water provider. Mr. Morrison is neutral on the issue of whether the City or
2 West End should be the water provider for the extension area. (Tr. #2 at 87). According to Mr.
3 Morrison, he is "comfortable with any scenario that provides water to the project." (Tr. #2 at 87).
4 Thus, the ambivalence of the property owner strongly argues that additional factors that Staff
5 considered in its analysis are more critical here. Although a request for service is important, it is one
6 of several factors that Staff considers when analyzing what recommendation would best further the
7 public interest.

8 According to Staff witness, Blessing Chukwu, there are cases where there have been no
9 requests for service. (Tr. #2 at 168). Staff was able to identify two cases, both of which have yet to
10 be decided by the Commission, where there are not requests for service for the entire extension area.
11 The first case is Docket No. W-01445A-06-0317. In this case, Staff recommends in its Staff Report
12 that certain extension areas are justified, despite a lack of requests for service, to enhance regulatory
13 and operational efficiencies. (W-01445A-06-0317 Staff Report at 2). This case has not gone to
14 hearing yet.

15 The second case is Docket No. W-01445A-06-0059. This case went to Open Meeting on
16 October 17, 2006. In this case, the Recommended Opinion and Order ("ROO") listed nine factors
17 that Staff looks at when considering whether to recommend approval of CC&N extensions into areas
18 for which there are no requests for service. (Docket No. W-01445A-06-00059, ROO at 6,7). The
19 ROO also pointed out all the areas where Staff supported granting the extension even though the
20 company did not have requests for service. Despite the lack of requests for service, the ROO goes on
21 to say that "Staff's analysis of AWC's [Arizona Water Company's] application for an extension of its
22 CC&N [is] reasonable under the specific facts and circumstances presented in this case." (*Id.* at 9).
23 While that case has been stayed for a month to clarify all of the property owners' preferences, there is
24 no such ambiguity here. The property owner here has expressed the absence of any partiality toward
25 either provider.

26 ...

27 ...

28 ...

1 Further, though parties may in time be able to supply landowner witnesses to support their
2 respective positions, additional delay does not serve the public interest. As Ms. Chukwu explained,

3 Say for instance, if the City of Surprise had a doubt that maybe Walden Farms –
4 maybe Walden Farms or Woodside would support them, [the City] could have pursued
5 [the prospective property owners] to come and support [the City's] course, just like
6 West End could have. But unfortunately nobody is here... [a]nd we cannot continue
7 to hold this application because it's in the process of trying to change hands.

8 (Tr. #2 at 297-298). Additional delay to identify the final owner only prejudices West End
9 because there already is a request for service from the owner at the time of the application. (TR. #2
10 at 298).

11 **III. WEST END WATER COMPANY IS READY TO PROVIDE SERVICE**
12 **IMMEDIATELY**

13 The balance of the public interest weighs in favor of granting the certificate to West End.
14 First, West End should be granted the CC&N extension because it would be able to provide water
15 services to the area immediately. West End already has the facilities in place to provide service.
16 According to Mr. Collins, West End “could do it immediately. . .Walden Ranch is bounded on the
17 north side by Lone Mountain Road, and we have an existing water line there now.” (Tr. #1 at 115).

18 The City, on the other hand, faces obstacles that would prevent it from providing service in so
19 timely a manner. According to the City's witness, Richard Williams, the City “does not have a
20 current water distribution system in the area and construction water could be purchased from the
21 existing West End Water, assuming they would be willing to sell it.” (Tr. #1 at 195). Also, although
22 Walden is within the City's planned annexation area, the City has not annexed the extension area yet.
23 According to Scott Chesney, a witness for the City of Surprise, “the annexation process requires the
24 consent of a percentage of property owners in an area proposed for annexation.” (Tr. #1 at 80). Mr.
25 Chesney also pointed out that the “position of the City and the planning department is that we accept
26 annexation interests and petitions from the landowners.” (Tr. #1 at 81). The annexation of the
27 extension area is only part of the City's General Plan 2020 (COS-10) and actual annexation may or
28 may not occur for many years.

As Staff witness Ms. Chukwu related, the City was ambiguous about when the annexation
process would begin for the territory in question. (Tr. #2 at 287-288) Thus, the property owner may

1 have to leave the area undeveloped for several years because of an inability to obtain water service.
2 Due to the uncertainty of the timing of the City's planned annexation of the extension area, West End
3 should be granted the CC&N extension.

4 **IV. SERVICE BY WEST END WATER COMPANY WILL BE MORE BENEFICIAL TO**
5 **CUSTOMERS THAN SERVICE BY THE CITY OF SURPRISE**

6 In addition to being able to supply water immediately, the public interest favors granting the
7 CC & N to West End because it would be better to have one company serve an entire subdivision as
8 opposed to dividing the service among multiple entities. Walden is approximately 70 % within West
9 End's current service area. The remaining 30 % of Walden is situated in the extension area contested
10 by West End and the City. It would be advantageous for the Walden customers to have one system.
11 According to West End's witness, Ray Jones, "People in a development . . . belong to a common
12 homeowner's association, typically attend the same schools, interact quite a bit." (Tr. #1 at 147).
13 Staff agrees that it will reduce confusion in the subdivision "for everybody to be on the same water
14 company, have the same water rates." (Tr. #1 at 147).

15 Further, it will be less expensive for West End to serve the extension area than it will be for
16 the City. West End is already providing water service to 70% of the Walden property. If the City
17 serves the extension area, there will be two water providers serving the same subdivision. According
18 to West End's witness, Ray Jones, "[i]t would be cheaper using West End than building two separate
19 systems, and that would be true regardless of who the two parties were. It could be two private
20 companies, two cities. Two systems is going to cost more than one system." (sic) (Tr. #1 at 146).
21 Consequently the cost of the system will be lower without sacrificing service if West End is granted
22 the CC & N extension.

23 Likewise, if the City serves the extension area, they would probably be in the position of
24 building a temporary, stand-alone system. It is certainly technically feasible for the City to do this.
25 (Tr #2 at 263) However, according to Staff's witness, Dorothy Hains, if the City is "building a small
26 isolated system in this request area, your pipe will be much smaller. You probably don't have enough
27 booster pumps needed if you consider using this, your central system in here, then developing the
28 whole area. Then this system is not—I mean, talking about this requested area system, it may not be

1 a permanent system; it's temp." (Tr. #1 at 264). A stand-alone system will cost more than being part
2 of a larger system and will be more expensive to operate. (Tr. #1 at 144). Ray Jones, a consultant
3 engineer for West End, estimated the cost differential between West End's system and the probable
4 stand-alone system that Surprise would build. As Mr. Jones testified, the cost of building a complete
5 water service system for the development by the City would run approximately \$4,456 per lot
6 whereas West End provides water service at approximately \$2,016 per lot. *Id.* Mr. Jones' estimate
7 led him to the conclusion that it would be "approximately 59 percent more expensive for the stand[-
8]along system." (Tr. #1 at 146).

9 **V. WEST END WATER COMPANY IS DETERMINED TO RESOLVE WATER LOSS**
10 **ISSUE**

11 Water loss issues are common among older systems. According to Mr. Jones, "we all know
12 that an old system should be more prone to leakage and problems of water loss than a newer
13 system... [but] I know that they're committed to maintaining this system, to investigating this water
14 loss issue, and bringing the corrective actions to bear that will correct it." (Tr. #1 at 152-153)
15 Currently, West End has an overall water loss of 16 percent water. Acceptable water loss is 10
16 percent and therefore West End has taken immediate actions to rectify the issue. Further, Mr. Marvin
17 Collins stated West End has, "contacted Heath Consultants for a proposal to come out and to do a
18 leak detection and also unauthorized connections of the system." (Tr. #1 at 33). Once the new
19 systems are installed for the developments, the system will be largely new. As Mr. Jones indicated, "
20 ...with the new system, as with any new system, we expect water loss below 5 percent. And between
21 that and the corrective actions that are taken, fully expect the water loss of West End to come into line
22 and be under 10 percent." (Tr. #1 at 153).

23 **VI. ACC HAS CHOSEN PRIVATE WATER COMPANIES OVER CITIES IN PRIOR**
24 **DECISIONS**

25 The Commission has encountered the private water company versus a municipality issue in
26 the past. In Decision No. 68607, Arizona Water Company sought Commission authority to extend its
27 CC&N. In that case, just like in the present case, the neighboring city intervened because the
28 extension area included land that was within the city's general planning area. In both cases, Staff

1 concluded that there was adequate production and storage capacity to serve the existing and extension
2 areas. In the above case, the neighboring municipality was the city of Eloy ("Eloy").

3 West End's situation is most similar with the resolution of the Parcel 3 issue of the Arizona
4 Water Company case. Although Parcel 3 lay outside it was actually contiguous to the municipal
5 boundary of Eloy, and it was located within the planned development area, whereas City of Surprise
6 is several miles away from the area presently in dispute. Eloy expressed concern about future costs
7 associated with annexation via eminent domain if Arizona Water Company received a CC & N to
8 serve the area. Despite this concern, Eloy had no definitive time frame for when annexation would
9 occur. Parcel 3 had a separate wastewater provider. The main difference between the Arizona Water
10 Company case and the present case is that the private landowners in Parcel 3 requested service from
11 Arizona Water Company. In the present case, although West End initially received a request for
12 service, the present developer appears to be neutral on the issue of who should be the water provider.
13 In Decision No. 68607, the Commission decided that Parcel 3 should go to Arizona Water because of
14 the request for service and the company's ability to provide service sooner than the City of Eloy. The
15 Commission denied Eloy's requests to have the parcel excluded because "Parcel 3 is not within
16 Eloy's city limits and Eloy provided no timeframe for when service would be provided." (Decision
17 No. 68607 at 7).

18 **VII. CONCLUSION**

19 West End should be granted the CC&N extension and be allowed to serve the entire Walden
20 development. The multiple requests for service from different developers in this case have clearly
21 established a need for a water provider in the extension area. West End is ready, able and willing to
22 provide water service to the extension area. Approximately 70 percent of the Walden development is
23 already within West End's current CC&N, and it would make economical and practical sense to grant
24 the extension to cover the remaining 30 percent. West End would be able to bring service to Walden
25 immediately and would be able to build a permanent system for the future more economically than
26 the City. The City does not have a definite timeline for annexation and may not have one for many
27 years to come. West End has provided evidence that the water loss issue will be resolved in a timely
28 manner. West End has proven that they are willing to comply with Staff's recommendations and

1 should be given the opportunity to serve the remaining 30 percent of the Walden development.
2 Therefore, in Staff's view, it is in the public interest to grant West End's application for an extension
3 of its CC&N.

4 RESPECTFULLY SUBMITTED this 1st day of November, 2006.

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6 

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